IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

ASSOCIATED RECOVERY, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:15-cv-01723-AJT-JFA
	)	
JOHN DOES 1-44,	)	
	)	
Defendants in rem.	)	

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE DEFAULT JUDGMENT REGARDING FXF.COM

Ye Yu sued as defendant FXF.com, pursuant to Federal Rule of Civil Procedure 60(b), submit this Memorandum in Support of Motion to Set Aside Default Judgement. Ye Yu is owner of the FXF.com, one of the domain names against which Plaintiff has brought this complaint.

FACTS

A.   Related Litigation Case

This dispute is related to Case 3:09-CV-00988, *Netsphere Inc et al v. Baron et al.,* which is filed on 2009-05-28 in Texas Northern District Court.

Pursuant to the Northern District Court of Texas's order authorizing sales of the Plaintiff's domain names to meet the unpaid legal expenses. The domain "FXF.com" is allerged as one of the domains.

B.   Ye Yu Purchases FXF.com

Ye Yu purchased the controlling interest of the domain "FXF.com" through "SEDO.com" marketplace from previous registered owner. (Exhibit-1: Contract and Sale Agreement)

After purchase, Ye Yu immediately began using the domain. Efforts and resources have been put into the planning for "FXF.com", which was renewed for many years in advance for our long term plan on the domain. (Exhibit-2: Renewal Invoice)

C.   Service of Complaint

The plaintiff declared that they are unable to serve defendant "FXF.com" by privacy email in ECF 17-1, however there are 3 problems with that:

Firstly, the Plaintiff falsely declared that the privacy email was not working. Ye Yu didn't experience any problem in receiving alerts through the privacy email address. To support this, an example inquiry coming through the privacy email is provided as Exhibit 3 (Exhibit-3: Purchase Inquiry).

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Secondly, The plaintiff didn't perform due diligence. The privacy email is a paid service provided by the ENOM aka. NameCheap.com (the "registrar") to help protected domain owner's personal email address online, it's never intended to block communication. If the plaintiff contact the registrar, in this situation, the registrar has the obligation to relay the message to the domain owner.

Thirdly, the email address used in service is either wrong or made up. let's compare the email address in Exhibit-3 with which someone else has emailed defendant successfully:

12664F3E16E24E89B1905AD3AC22E8FF.PROTECT@whoisguard.com

against the wrong or made up email used for service in ECF 17-1:

15B93ABAFD0B47E787820FDA56E25280.PROTECT@whoisguard.com

D.   Service by Publication

Plaintiff published the court order ECF-6 in the *Washington Times* on Feb 3, 2016. However, Ye Yu does not subscribe to the *Washington Times*.

E.   Default Judgement and Order

Ye Yu noticed the domain was transferred out of his domain account on June 8, 2016. immediately he tried to work with the registrar's support to resolve the suspected system error.

Ye Yu hear about the case for the first time only after registrar's legal department finally responded with the Court Order (ECF 43) they have received. Ye Yu immediately consulted his lawyer in California to learn about case.

Ye Yu initial plan was to reach out to the opposing party to explore possibility of quick resolution instead of being litigious. Ye Yu also communicated with Dentons for the prospect of being represented by them in the final week of July. After careful consideration, Ye Yu decided to file Pro Se. Since then, Ye Yu has been actively learning civil procedures, local rules and research relevant cases. Ye Yu has responded to the case in the most promptly manner as he is capable of due to the complex history of the case, and necessary efforts in learning relevant laws.

ARGUMENTS

A.   Constitutional Right

Attempt to contact by non-existing email address is the same as throw Service of Process down the sewer or mail it to an non-existing physical address.

By United States Constitution, Ye Yu is entitled to the due process of law. The plaintiff's invalid Service of Process injures the Constitutional right of Ye Yu. At the time of writing, without due process of law, the property ownership has been transferred.

B.   Preference to Meritorious Claim over Default

The Court VAED has strong tradition of giving preference to meritorious claims over defaults as evident for example: Case No. 1:11-cv-00888 JCC/JFA.

Ye Yu has acquired domain through a contractual transaction. The same goes for the previous registered owner(s) of the domain "FXF.com".

The plaintiff is involved with multiple cases that are all stemmed from the same primary case in Texas Northern District Court, which is later went into USCA. Because the main case is still open, the plaintiff has no concrete basis for the complaint.

Under FRCP Rule 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect". Ye Yu without prior legal practice experiences have been surprised and scrambling to react to the sudden loss of property without due process.

Under FRCP Rule 60(b)(3) for "fraud, misrepresentation, or misconduct by an opposing party". I don't know if opposing party has made up a fake email and "fraud" the Court, but even at the minimum, the Fact-C points of this memorandum with Exhibit-3 demonstrated that the plaintiff has misrepresented the fact in order to move the court to issue default judgement and subsequent order, which leads to

Ye Yu's Constitutional Right of due process of law being violated and the loss of

private property.

Pursuant to FRCP Rule 55(c) and Rule 60(b), the Court has a good cause to

set aside the default judgement.

C.   Plaintiff's Claim Is Unjust

The auctioned portion of the domains produced a lot of cash to cover the

Plaintiff's unpaid legal expenses. If the same domains returns to the Plaintiff for

free, it would be gross injustice to all subsequent owners, who have spent their

hard earned and saved money for these domains. This would be equivalent to

robbery on these domains owners.

D.   Plaintiff Misinterprets USCA5 Unwind Order

Fifth Circuit Court of Appeal ordered to vacate and unwind receivership,

however this should not be interpreted as to also reverse the past domain sales,

because these sales were necessary and only way to generate fund to cover legal

expenses affirmed by the Court.

By logic, if the Court ordered that the legal expenses shall be paid, it is also

affirming the past domain sales shall stand, because this is the only way to pay for

the legal expenses in the context of the original case.

Fifth Circuit Court of Appeal's original Court Orders never explicitly stated that the past domain sales shall be reversed, nor granting the plaintiff rights to take the domains back for free.

E.   Plaintiff Didn't Bring the Complaint in Good Faith

Texas Northern District Court is most familiar with the historic long standing cases involving the Plaintiff, yet the Plaintiff chose to file in a different state with a Court that has no prior encounter with the Plaintiff.

A look at the defendants listed in original complaint (ECF 1), the plaintiff picked only domains with oversea owner addresses and oversea private registration providers.

The foregoing stated factors are calculated to maximize the Plaintiff's chance to get default judgement.

F.   The Defendant Requests The Court To Restore All Parties' Position Prior to The Default Judgement

Because the default judgement was attained in questionable circumstances, and the plaintiff's assertion on the domain hasn't been contested in court through due process, the Plaintiff shouldn't have the right to continue hold the control of the domain "FXF.com".

Therefore, it is only fair to restore all parties' position prior to the Default Judgement.

G.   The Court Should Transfer This Action to Northern Texas District Court

Firstly, the complaint brought by plaintiff is stemmed from the still open case No. 3:09-CV-0988-F in the Northern Texas District Court, which held:

> *The court shall retain exclusive jurisdiction of this case over any disputes that may arise concerning this or any earlier order, the wind down of the Receivership estate, and the relief provided under this order, or any controversy that arises from or relates to the Receivership or actions of the Receiver or his professionals.*

Secondly, on August 1, 2016, the plaintiff has listed the defendant "FXF.com" in the Northern Texas District Court Case No. 3:16-cv-01025-L ECF 76 "Amended Complaint" as one of the defendants.
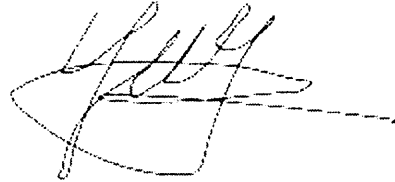
CONCLUSION

WHEREFORE, for all previous mentioned reasons, Ye Yu and defendant "FXF.com" respectfully request the Court to grand this motion to set aside default judgement (ECF 43) and order Uniregistrar Corp., the current registrar of the FXF.com domain name, in coordination with Verisign Inc., the registry of all

".com" domains, to take all steps within their power to transfer the domain back to

Ye Yu at its original registrar and transfer of the case to Northern District of Texas.

Dated: August 16, 2016   Respectfully submitted,

Ye Yu
5001 Wilshire Blvd, #112-528
Los Angeles, CA 90036
Phone: 818-919-5619
Email: info@yespire.com

IN THE UNITED STATES DISTRICT COURT
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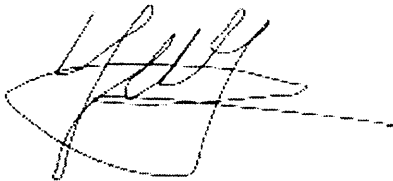|		
ASSOCIATED RECOVERY, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:15-cv-01723-AJT-JFA
	)	
JOHN DOES 1-44,	)	
	)	
Defendants in rem.	)	

CERTIFICATION

I declare under penalty of perjury that:

No attorney has prepared, or assisted in the preparation of this document.

Ye Yu

_____

Name of Pro Se Party

_____

Signature of Pro Se Party

Executed on: August 16, 2016

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IN THE UNITED STATES DISTRICT COURT
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JOHN DOES 1-44,	)	
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DECLARATION OF YE YU IN SUPPORT OF MOTION TO SET ASIDE DEFAULT JUDGEMENT REGARDING FXF.COM

I, Ye Yu, declare as follows:

1.   I am the owner of domain name FXF.com, filing pro se.

2.   Attached to this declaration as Exhibit-1 is a true and correct copy of

Purchase and Sale Agreement through which FXF.com is purchased from its

previous owner.

3.   Attached to this declaration as Exhibit-2 is a true and correct copy of his

payment confirmation for renewing domain FXF.com many years in advance.

4.   Attached to this declaration as Exhibit-3 is a true and correct copy of an inquiry received and relayed by the privacy email address, which is provided as example to show the Ye Yu can be reached by the privacy email address.
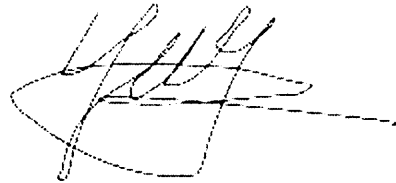
5.   I don't subscribe or read The Washington Times, through which the plaintiff published notice of action.

6.   I act as promptly as possible in efforts to recover the domain and respond to the court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 16, 2016   Respectfully submitted,

Ye Yu
5001 Wilshire Blvd, #112-528
Los Angeles, CA 90036
Phone: 818-919-5619
Email: info@yespire.com

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IN THE UNITED STATES DISTRICT COURT
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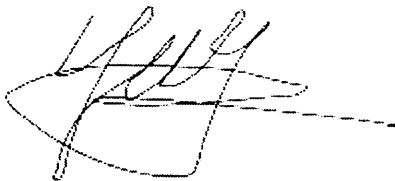|	
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	)
JOHN DOES 1-44,	)
	)
Defendants in rem.	)

CERTIFICATION

I declare under penalty of perjury that:

No attorney has prepared, or assisted in the preparation of this document.

Ye Yu

_____

Name of Pro Se Party

_____

Signature of Pro Se Party

Executed on: August 16, 2016

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EXHIBIT-1

Contract and Sale Agreement
of the domain "FXF.com"

.sedo®

Purchase and Sale Agreement

The following are the agreed upon terms and conditions for the purchase and sale of fxf.com. This agreement is written between Seller and Buyer, collectively the "Parties". Sedo GmbH or Sedo LLC itself are not parties to this agreement, but rather are contracted to assist with and guide the fulfillment.

Seller

Oliver Hoger
Apt. 663

8125 Vilamoura
Portugal

Buyer

Ye YU
401 S. Burnside Ave, Apt-11J
Los Angeles, CA 90036
United States

1. Definitions.

In this agreement the following words and phrases shall have the following meaning:

"Sedo Marketplace" means any of the integrated domain name marketplaces offered at an international collection of URLs that are owned or operated by Sedo GmbH or Sedo LLC or one of its subsidiaries.

"Payment Request" means an accounting document created by Sedo GmbH or Sedo LLC containing payment instructions related to the Purchase Object transfer.

"Purchase Object" means an Internet domain name offered for sale by the Seller via the Sedo Marketplace under the conditions articulated by Seller in their Offer Description posted on the Make Offer page for their listing, including, when marked as a website/project, content comprising the Website associated with said Internet domain, or conditions otherwise agreed upon by the Parties in the course of negotiation.

"Website" means any and all multimedia content, images, databases, user lists (including credentials and contact information, when applicable), and related underlying source code required for the continual operation of the website found at the corresponding domain at the time of agreement, unless otherwise indicated by Seller in their Offer Description or otherwise altered in the course of negotiation.

2. Purchase Object and Purchase Price

The Purchase Object of this Purchase and Sale Agreement of 01/21/2013 is the Internet domain name fxf.com, and when included by the Seller as indicated on the Make Offer page, the related Website.

The Purchase Price shall amount to 15,000.00 EUR including any statutory tax that may be incurred (for instance VAT).

3. Warranties and Representations

a) The Seller guarantees that they are the owner of the aforementioned Purchase Object and may freely dispose of said Purchase Object. Furthermore, Seller warrant that the Purchase Object is not encumbered by the rights of third parties and that to date, they have not received any warnings of potential litigation or preliminary injunctions against the Purchase Object that have not been disclosed to Buyer.

b) The Buyer understands and agrees that it is their sole responsibility and duty to perform all necessary due diligence before entering into this agreement to buy the Purchase Object, including research of fitness for particular intended uses, trademark clearance, or anything that could inhibit their future use and enjoyment of the Purchase Object.

c) Buyer and Seller shall be liable to each other only for damages that are based upon their failure to perform the necessary steps to complete this transaction, intentional wrongdoing or gross negligence and shall not be liable for claims seeking consequential or punitive damages.

4. Processing the Transaction

a) The Parties agree that processing of payment of the Purchase Price and facilitating the transfer of control of the Purchase Object shall be conducted by Sedo LLC, 161 First Street, Fourth floor, Cambridge, MA 02142, USA and/or Sedo GmbH, Im Mediapark 6, 50670 Cologne. The Parties understand that Sedo LLC or Sedo GmbH may charge a commission fee for this service and agree that such commission fee will be paid by the Parties according to the related terms of use of such service. Furthermore, the Parties acknowledge that any commission owed to Sedo GmbH or Sedo LLC is due at the effective date of this purchase and sale agreement, regardless of the completion of such.

b) In the event that either party fails to perform all reasonable steps necessary to submit payment, complete the transfer of control of the Purchase Object, or otherwise fails to communicate with Sedo's representatives in a timely manner, Sedo LLC or Sedo GmbH shall have the permission of the Parties to cancel or temporarily suspend attempts to transfer said Purchase Object and to demand the commission from the Party who has failed to complete all reasonable steps necessary to complete the transaction.

c) Buyer's Payment must be sent to Sedo and the remittance confirmed in writing to Sedo via the Sedo account interface within six (6) days from date of agreement.

d) Seller and Buyer agree to immediately perform all necessary steps required to complete the transfer of Purchase Object as soon as receiving related instructions from the assigned Sedo representative.

5. Disputes & Specific Performance

a) Due to the unique and specific nature of Internet domain names, the Parties agree that in the event a breach of this agreement results in a failed attempt to transfer control of the Purchase Object from Seller to Buyer, the aggrieved Party shall have the right to demand specific performance in lieu of monetary damages.

b) In the event that either Party requires legal assistance enforcing their rights pursuant to this agreement, the winning Party is entitled to recover legal fees from the other.

c) For the avoidance of doubt, should this purchase and sale transaction fail due to the breach of this agreement by either Party, including, but not limited to following or responding to all necessary instructions provided by Sedo pursuant to its Domain Transfer and Escrow Service, the breaching party shall be liable to Sedo for the commission fee.

d) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to any choice-of-law or conflict-of-law provision or rule (whether of Massachusetts or of any other jurisdiction) that would cause the application of the laws of any jurisdiction other than Massachusetts.

e) If any provision of this Agreement, or part thereof, shall be held to be unenforceable, void or contrary to law, such provision, or part thereof, shall be severed from this Agreement, with the other provisions remaining in full force and effect. The ineffective provision shall be replaced by a valid one that approaches the ineffective provision as closely as possible.

Print

EXHIBIT-2

Forward Renewal Receipt
of the domain "FXF.com"

Ⓜ Gmail

Namecheap.com Order Summary (Order# 10757456, Order Ref# yespire-172.251.78.99-c340f593008f4a62b6c893010cd5d301);

1 message

Namecheap Support <support@namecheap.com>   Tue, Feb 25, 2014 at 2:10 PM
To: Ye Yu <email.yuye@gmail.com>
Cc: "registrationsummary1@namecheap.com" <registrationsummary1@namecheap.com>

Namecheap.com Order Summary
Date: 02/25/2014

Dear Ye,

Thank you very much for choosing services offered by Namecheap.com. The following is the summary of your order.

Order Details

Order Date:	2/25/2014 5:10:18 PM	Payment Source:	FUNDS
Order Number:	10757456	Initial Charge:	$83.76
Transaction ID:	13547751	Final Cost:	$83.76
User Name:	yespire		
Address:	5001 Wilshire Blvd	Total Refund:	N/A
	#112-528	Refund Transaction ID:	N/A
	Los Angeles	Refunded To:	N/A
	CA,90036		
	US		

TITLE	QTY	DURATION	PRICE	SUB TOTAL
				$82.32
Domain Renewal fxf.com	1	8 year	$10.29	ICANN Fee $0.18
			Sub Total	$83.76
			TOTAL	**$83.76**

Additional Transaction Details

Order Ref # yespire-172.251.78.99-c340f593008f4a62b6c893010cd5d301
Approval #

Web Hosting Customers:
If you have purchased shared or reseller hosting, your hosting account is setup instantly and account details are sent to your email address. For orders with add-ons it may take up to 4 hours additionally to be configured. If you have purchased VPS or dedicated server, it may take from 1 to 24 hours for the order to be provisioned depending on the configuration you've chosen. You will receive an email with access details once everything is setup. We recommend you to check our Getting Started Articles for easy start with our hosting.

SSL Certificates:
If you have purchased an SSL certificate, please go to the SSL listing page and click on the 'Activate Now' link to enter your CSR. Please visit our Knowledgebase to find instructions on how to create a CSR and install the certificate on your server. Important: Please use CSR code with 2048-bit private key to activate your SSL certificate. According to modern security

standards using CSR codes with private key size less than 2048 bits is not allowed.

TRUSTe Privacy Policy Customers:
If you have purchased a TRUSTe Privacy Policy or a TRUSTe Privacy Policy with Seal, please go to the TRUSTe listing page There, please click the domain you want to activate the TRUSTe product for. Once on the Privacy Policy Info page, click the link "Login in to TRUSTe control panel" to start the registration process. You can follow the instructions from there.

Domain Transfers - EPP Requirements:
If you are transferring domains that require an EPP code (.COM, .NET, .ORG, .BIZ, .INFO, .US, .MOBI, .CN, .ME, .TV), you will need to provide us with the EPP code for those domains. Please obtain the EPP code from your current registrar. Once you have the code, go to the **Transfers in Progress page** and click on the domain you are transferring into Namecheap and enter the EPP code (the link will not be present if that domain doesn't require EPP). You will also be notified by Namecheap via email if an EPP code is required. Please note that the transfer can proceed only after the EPP code is provided to us.

Note for domain renewal:
It is highly recommended to use the Auto Renewal option to renew .EU and .DE domains. If you choose to manually renew these domains, please note that .EU and .DE domain renewals do not happen immediately. Please do not try to renew your domain again unless an error occurs and you are explicitly requested to try another time. Otherwise, domain may not be extended properly. If there is any problem with the renewal, the amount paid will be refunded back to the source of payment (Credit Card or Namecheap account funds).

Should you have any questions or concerns, please contact us with the above information.

Sincerely,
Namecheap Team
http://www.namecheap.com/

EXHIBIT-3

Example Purchase Inquiry of the domain "FXF.com"

◁ Gmail

Ye Yu <email.yuye@gmail.com>

About fxf.com
1 message

Jennifer Young <jmyoung.fy13@gmail.com>
To: 12664F3E16E24E89B1905AD3AC22E8FF.PROTECT@whoisguard.com

Sun, Nov 8, 2015 at 3:01 AM

To Whom it may concern,

I located your contact from whois lookup and I understand that you own the domain name fxf.com
I am looking to secure a domain name for my startup and I think fxf.com would be useful.

In order to express my genuine interest in fxf.com I would like to make a serious offer of $35,000 USD via escrow.
I believe the price is fair because the domain is short and easy to remember.

Please feel free to let me know your thoughts.

Best Regards,
Jennifer

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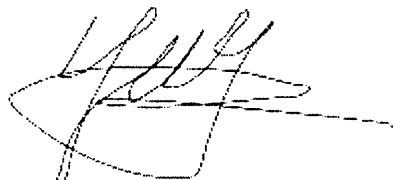## NOTICE OF HEARING

PLEASE TAKE NOTICE that Ye Yu (the defendant of "FXF.com"), on September 9, 2016, at 10:00 am, or as soon thereafter as the undersigned may be heard, will present to the Court the Motion to Set Aside the Default Judgement.

Dated: August 16, 2016   Respectfully submitted,

Ye Yu
5001 Wilshire Blvd, #112-528
Los Angeles, CA 90036

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Phone: 818-919-5619
Email: info@yespire.com

IN THE UNITED STATES DISTRICT COURT
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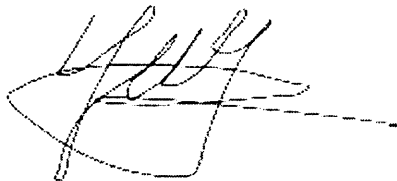|		
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v.	)	Case No. 1:15-cv-01723-AJT-JFA
	)	
JOHN DOES 1-44,	)	
	)	
Defendants in rem.	)	

CERTIFICATION

I declare under penalty of perjury that:

No attorney has prepared, or assisted in the preparation of this document.

Ye Yu

_____

Name of Pro Se Party

_____

Signature of Pro Se Party

Executed on: August 16, 2016

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